

Journal of the Senate

TUESDAY, FEBRUARY 10, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Terry Dorsett of Barre.

Pledge of Allegiance

Pages Katie Hango and Mariah Hay then led the members of the Senate in the pledge of allegiance.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 67. An act relating to motor vehicles.

S. 70. An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 75.

By Senators White and Miller,
An act relating to statutory rape.
To the Committee on Judiciary.

S. 76.

By Senators Lyons, Ayer and Shumlin,
An act relating to brominated flame retardants and bisphenol A.
To the Committee on Natural Resources and Energy.

S. 77.

By Senators Lyons, Hartwell and MacDonald,

An act relating to the disposal of electronic waste.

To the Committee on Natural Resources and Energy.

S. 78.

By Senator Mullin (by request),

An act relating to special registration plates for use by local law enforcement officers.

To the Committee on Transportation.

Joint Resolutions Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 15. Joint resolution relating to March recess.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 27, 2009, or Saturday, February 28, 2009, it be to meet again no later than Tuesday, March 17, 2009.

This joint resolution supersedes J.R.S. 4.

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Shumlin,

J.R.S. 16. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, February 13, 2009, it be to meet again no later than Tuesday, February 17, 2009.

**Message from the Governor
Appointments Referred**

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Weaver, Thomas G. of Essex Junction - Member of the Vermont Housing and Conservation Board, - from February 2, 2009, to January 31, 2012.

To the Committee on Economic Development, Housing and General Affairs.

Howrigan, Harold J., Jr. of Sheldon - Member of the Current Use Advisory Board, - from February 2, 2009, to January 31, 2012.

To the Committee on Natural Resources and Energy.

Coates, David R. of Colchester - Member of the Vermont Municipal Bond Bank, - from February 2, 2009, to January 31, 2011.

To the Committee on Finance.

Boardman, Kathryn T. of Shelburne - Member of the Vermont Municipal Bond Bank, - from February 2, 2009, to January 31, 2011.

To the Committee on Finance.

O'Brien, Stephanie of South Burlington - Member of the Liquor Control Board, - from February 2, 2009, to January 31, 2015.

To the Committee on Economic Development, Housing and General Affairs.

Valerio, Matthew F. of Proctor – Defender General, - from March 1, 2009, to February 28, 2013.

To the Committee on Institutions.

Senecal, Joan K. of Montpelier – Commissioner, Department of Disabilities, Aging and Independent Living, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Davis, Wendy, M.D. of Burlington – Commissioner, Department of Health, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Pelham, Thomas of Berlin – Commissioner, Department of Taxes, - from March 1, 2009, to February 28, 2011.

To the Committee on Finance.

Rutledge, Bonnie of Waterbury – Commissioner, Department of Motor Vehicles, - from March 1, 2009, to February 28, 2011.

To the Committee on Transportation.

Allbee, Roger N. of Townshend – Secretary, Agency of Agriculture, Food and Markets, - from March 1, 2009, to February 28, 2011.

To the Committee on Agriculture.

Dorn, Kevin of Essex Junction – Secretary, Agency of Commerce and Community Development, - from March 1, 2009, to February 28, 2011.

To the Committee on Economic Development, Housing and General Affairs.

Murray, Thomas of Middlesex – Commissioner, Department of Information and Innovation, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Herlihy, David of Waitsfield - Commissioner, Department of Human Resources, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Reardon, James of Essex Junction - Commissioner, Department of Finance, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Myers, Gerald D. of Winooski - Commissioner, Department of Buildings and General Services, - from March 1, 2009, to February 28, 2011.

To the Committee on Institutions.

Lunderville, Neale F. of Burlington - Secretary, Agency of Administration, - from March 1, 2009, to February 28, 2011.

To the Committee on Government Operations.

Thabault, Paulette of South Burlington - Commissioner, Department of Banking, Insurance, Securities and Health Care Administration, - from March 1, 2009, to February 28, 2011.

To the Committee on Finance.

O'Brien, David of Stowe - Commissioner, Department of Public Service, - from March 1, 2009, to February 28, 2011.

To the Committee on Finance.

Gibbs, Jason of Duxbury - Commissioner, Department of Forests, Parks and Recreation, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Laroche, Wayne Allen of Franklin - Commissioner, Department of Fish and Wildlife, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Pelosi, Laura of Barre - Commissioner, Department of Environmental Conservation, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Wood, Jonathan of Cambridge - Secretary, Agency of Natural Resources, - from March 1, 2009, to February 28, 2011.

To the Committee on Natural Resources and Energy.

Hartman, Michael A. of Montpelier - Commissioner, Department of Mental Health, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare .

Dill, David of Lyndonville - Secretary, Agency of Transportation, - from March 1, 2009, to February 28, 2011.

To the Committee on Transportation.

Hyde, Bruce of Granville - Commissioner, Department of Tourism and Marketing, - from March 1, 2009, to February 28, 2011.

To the Committee on Economic Development, Housing and General Affairs.

Bishop, Bethany of Montpelier - Commissioner, Department of Economic Development, - from March 1, 2009, to February 28, 2011.

To the Committee on Economic Development, Housing and General Affairs.

Pallito, Andrew A. of Jericho - Commissioner, Department of Corrections, - from March 1, 2009, to February 28, 2011.

To the Committee on Institutions.

Dale, Stephen R. of Montpelier - Commissioner, Department of Children and Families, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Hofmann, Robert D. of Waterbury – Secretary, Agency of Human Services, - from March 1, 2009, to February 28, 2011.

To the Committee on Health and Welfare.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

S. 55.

On motion of Senator White, the rules were suspended, and S. 55 was taken up for immediate consideration, for the purpose of relieving the Committee on Government Operations from further consideration of the bill. Thereupon, on motion of Senator White, the Committee on Government Operations was relieved of Senate bill entitled:

An act relating to the probate judge vacancy in Bennington County, and the bill was committed to the Committee on Judiciary.

Bills Amended; Third Readings Ordered

S. 42.

Senator Ayer, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Banking * * *

Sec. 1. 8 V.S.A. § 19(d) is amended to read:

(d) ~~Semiannually on or before February 15 and August 15, the~~ The commissioner shall apportion the expenses allowed under the title ~~“department of banking”~~ “Banking, insurance, securities, and health care administration - banking” in the annual appropriation bill among the several financial institutions and credit unions directly regulated under this title, including the operations in Vermont of any such entity organized in another jurisdiction ~~and credit unions, after first deducting all monies received by the banking division.~~ The commissioner shall notify each entity of the amount so apportioned to it, and that amount shall be paid into the state treasury within 30 days after receipt of that notice. Annually, on or before November 1, the commissioner shall issue a bulletin setting forth the assessment. The assessment shall consider surpluses or shortfalls from prior year assessments, increases, and decreases in entity deposits and assets under management, and any other factor that may affect the banking division’s expenditures and revenues. The commissioner shall send each entity a bill for such entity’s portion of the assessment on or

before March 1 of each year, which bill shall be paid into the state treasury on or before April 1.

(1) Financial institutions and credit unions that accept deposits ~~and credit unions~~ will be assessed ~~in proportion to~~ based on the amount of their average deposits held in this state ~~for the preceding six month period ending December 31 and~~ on the preceding June 30.

(2) In the case of merchant banks established under section 12603 of this title, the assessment shall be based on assets in this state on the ~~last day of December and~~ preceding June ~~preceding~~ 30.

(3) In the case of special purpose financial institutions that are not permitted to accept deposits, except merchant banks established under section 12603 of this title, and independent trust companies organized or operating under chapter 77 of this title, the assessment will be based on assets under management in this state on the ~~last days of December and~~ preceding June ~~preceding~~ 30.

(4) No institution, credit union, or independent trust company, or merchant bank subject to assessment under ~~subdivisions~~ subdivision (1), (2), or (3) of this subsection may pay less than ~~\$500.00~~ \$2,000.00 per ~~semiannual~~ annual assessment.

(5) Loan production offices or persons engaged in an approved loan production activity authorized under prior law, which do not pay an assessment under ~~subdivisions~~ subdivision (1), (2), or (3) of this subsection, shall pay a ~~semiannual~~ an annual fee of ~~\$600.00~~ \$1,200.00.

Sec. 2. 8 V.S.A. § 2403(g) is amended to read:

(g) At the time it commences business, an independent trust company shall have, ~~and shall maintain thereafter~~ unimpaired capital in ~~the~~ an amount of not less than \$250,000.00 or one-quarter of one percent of the first year's projected assets under management, whichever is greater. ~~Thereafter, an independent trust company shall maintain unimpaired capital in an amount not less than \$250,000.00 or one-quarter of one percent of the first year's projected assets under management, whichever is greater, up to a maximum of \$1,000,000.00.~~ The unimpaired capital and surplus of an independent trust company shall be held as security for the faithful discharge of the fiduciary duties undertaken as well as for the claims of other creditors. The commissioner may from time to time require or allow ~~adjustments~~ increases or decreases to the unimpaired capital ~~otherwise required by this subsection, up to such \$1,000,000.00 maximum,~~ as deemed necessary or desirable for the protection of customers

and the safety of the trust business. The safety and soundness factors to be considered by the commissioner in the exercise of such discretion include:

- (1) the nature and type of business conducted;
- (2) the nature and degree of liquidity in assets held in a corporate or company capacity;
- (3) the amount of fiduciary assets under management;
- (4) the complexity of fiduciary duties and degree of discretion undertaken; and
- (5) the extent and adequacy of internal controls.

Sec. 3. 8 V.S.A. § 2518(b) is amended to read:

(b) A licensee under this subchapter shall submit an annual report, on or before ~~May~~ April 1 for the preceding calendar year, in a form and in a medium prescribed by the commissioner. The annual report shall state or contain:

- (1) a description of each material change in information submitted by the licensee in its original license application that has not been previously reported to the commissioner on any required report;
- (2) a list of the locations in this state where the licensee engages in check cashing or currency exchange, including limited stations and mobile locations; and
- (3) any other information the commissioner may require.

* * * Insurance * * *

Sec. 4. 8 V.S.A. § 13(c) is added to read:

(c) If an appeal or other petition for judicial review of a final order is not filed in connection with an order of the commissioner under this title, or chapter 221 of Title 18, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

Sec. 5. 8 V.S.A. § 22(c) is amended to read:

(c) Any information furnished pursuant to this ~~subsection~~ section by or to the commissioner that has been designated confidential by the furnisher of the information shall not be subject to public inspection under ~~Title 1~~, chapter 5 of Title 1, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Sec. 6. 8 V.S.A. § 3561 is amended to read:

§ 3561. ANNUAL STATEMENT

(a) Each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. The statement shall be prepared in accordance with the National Association of Insurance Commissioners' Instructions Handbook and Accounting Practices and Procedures Manual and shall be in such general form and context, as approved by, and shall contain any other information required by, the National Association of Insurance Commissioners with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of an alien insurer shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise. A foreign or alien company, upon withdrawing from the state of Vermont shall pay to the commissioner \$25.00 for the filing of its final financial statement.

(b)(1) At the direction of the commissioner each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner, in a manner and on forms approved by the commissioner, a statement of its market conduct performance for the purpose of permitting the participation of this state in the Market Conduct Annual Statement program of the National Association of Insurance Commissioners. The statement shall be prepared in accordance with the Market Conduct Annual Statement instructions published by the National Association of Insurance Commissioners, with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner.

(2) Subject to section 22 of this title, all market conduct annual statements and other information filed pursuant to subdivision (1) of this subsection, all records, and other information of investigations conducted by the department under this title, whether such statements, records, or information are in the possession of another regulatory or law enforcement agency, the National Association of Insurance Commissioners, or any another person, shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action.

(c) The commissioner shall adopt by rule the Medical Professional Liability Closed Claim Reporting Model Law of the National Association of Insurance Commissioners, as amended from time to time, or in the commissioner's discretion a substantially similar rule. Subject to section 22 of this title, information which identifies, directly or indirectly, the closed claims of a health care facility or a health care provider shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action.

Sec. 7. 8 V.S.A. § 3578a is added to read:

§ 3578a. ANNUAL FINANCIAL REPORTING

(a) The commissioner shall adopt by rule the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners, as amended from time to time, or in the commissioner's discretion a regulation substantially similar thereto.

(b) A domestic insurer required to be audited pursuant to the annual financial reporting rule adopted by the commissioner under subsection (a) of this section shall register with the commissioner the name and address of the certified public accountant retained in compliance with this section, and pay a registration fee of \$100.00. If the commissioner determines that a report filed by a foreign or alien insurer is not substantially similar to the requirements imposed by the annual financial reporting rule adopted by the commissioner under subsection (a) of this section, the foreign or alien insurer shall, within 30 days of such determination, register the name and address of the certified public accountant retained in compliance with this section, and pay a registration fee of \$100.00.

Sec. 8. REPEAL

8 V.S.A. §§ 3578 (requirements for annual audited financial reports) and 3579 (qualified accountants) are repealed when the rules adopted under Sec. 7 of this act become effective.

Sec. 9. 8 V.S.A. § 3661(c) and (d) are added to read:

(c) An employer who willfully makes a false statement or representation for the purpose of obtaining a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than \$5,000.00 in addition to any other appropriate penalty. The authority granted to the commissioner by this

subsection shall be in addition to any other authority granted to the commissioner by law.

(d) Any person who knowingly makes a false statement or representation in an application, petition, certification or verification made in accordance with the provisions of this title, or of chapter 221 of Title 18, or a certification or other filing with the Interstate Insurance Product Regulation Commissioner under chapter 165 of this title, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than \$5,000.00. The authority granted to the commissioner by this subsection shall be in addition to any other authority granted to the commissioner by law.

Sec. 10. 8 V.S.A. § 3805(4) is amended to read:

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed to the creditor, or creditors or ~~\$40,000.00~~ \$70,000.00 whichever is less, except that the amount of such insurance on the life of a debtor who has secured a debt by a mortgage on real estate shall at no time exceed ~~\$80,000.00~~ \$140,000.00, or the amount owed, whichever is less. Where the insurance is in connection with an educational or agricultural credit transaction commitment, the amount owed by the debtor to any creditor may be deemed to include the portion of the loan commitment that has not been advanced by the creditor.

Sec. 11. 21 V.S.A. § 708(b) is amended to read:

~~(b) Action by the commissioner of banking, insurance, securities, and health care administration. An employer who willfully makes a false statement or representation for the purpose of obtaining a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than \$5,000.00 in addition to any other appropriate penalty. In addition to any other remedy provided by law, the commissioner of banking, insurance, securities, and health care administration may pursue the collection of the administrative penalty imposed by this section in Washington superior court~~ When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

Sec. 12. 8 V.S.A. § 5105(a) is amended to read:

(a) The commissioner shall make an examination of the affairs of any health maintenance organization organized or holding a certificate of authority as a health maintenance organization in this state as often as the commissioner deems it necessary, but not less frequently than once in every three years to assure that the financial and contractual obligations of the health maintenance organization are being met in accordance with Vermont law. The commissioner may enlarge the aforesaid three-year period to five years, provided the health maintenance organization is subject to a comprehensive annual audit during such period of a scope satisfactory to the commissioner, by independent auditors approved by the commissioner. The commissioner shall examine a health maintenance organization that is organized in another state as if it were organized in this state. In lieu of such examination, the commissioner may accept an examination report on the company as prepared by the insurance department of the company's state of domicile. Prior to accepting an examination report from any foreign jurisdiction, the commissioner shall determine that the examination was performed in a manner and using methods and criteria that are as stringent as those established for Vermont examinations. Nothing in this section shall restrict the commissioner's power to examine a health maintenance organization when the commissioner deems it to be in the best interests of members or policyholders.

Sec. 13. 32 V.S.A. § 8557(a) is amended to read:

(a) Sums for the expenses of the operation of training facilities and curriculum of the Vermont fire service training council not to exceed \$800,000.00 per year shall be paid to the fire safety special fund created by section 3157 of Title 20 by insurance companies, including surplus lines companies, writing fire, homeowners multiple peril, allied lines, farm owners multiple peril, commercial multiple peril (fire and allied lines), private passenger ~~auto~~ and commercial auto ~~physical damage and liability, surplus lines~~, and inland marine policies on property and persons situated within the state of Vermont within 30 days after notice from the commissioner of banking, insurance, securities, and health care administration of such estimated expenses. Captive ~~and surplus line~~ companies shall be excluded from the effect of this section. The commissioner shall annually, on or before July 1, apportion such charges among all such companies and shall assess them for the same on a fair and reasonable basis as a percentage of their gross direct written premiums on such insurance written during the second prior calendar year on property situated in the state. An amount not less than \$100,000.00 shall be specifically allocated to the provision of what are now or formerly referred to as Level I, units I, II, and III (basic) courses for entry level firefighters.

Sec. 14. REPEAL

Sec. 34 of No. 190 of the Acts of the 2007 Adj. Sess. (2008) is repealed.

Sec. 15. 8 V.S.A. § 3615(a)(1) is amended to read:

(1) Be obligated to the extent of the covered claims existing prior to the order of liquidation, arising within 30 days after the order of liquidation, or before the policy expiration date if less than 30 days after the order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within 30 days of the determination, but this obligation shall include only that amount of each covered claim which, unless it is a claim arising out of a workers' compensation policy, is less than ~~\$300,000.00~~ \$500,000.00 and which, if it is a claim for unearned premium, is in excess of \$25.00. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises, nor for any claim filed with the association after the final date set for the filing of claims against the liquidator or receiver of the insolvent insurer, nor in any event after the expiration of three years from the date of determination of the insolvency of such insurer.

Sec. 16. 8 V.S.A. § 4158(8) is amended to read:

(8) The benefits for which the association may become liable shall in no event exceed the lesser of:

(A) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired insurer; or

(B)(i) With respect to any one life, regardless of the number of policies or contracts:

(I) \$300,000.00 in life insurance death benefits, but not more than \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(II) ~~\$300,000.00 in health insurance benefits, including any net cash surrender and net cash withdrawal values~~ In health insurance benefits:

(aa) \$100,000.00 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(bb) \$300,000.00 for disability insurance and \$300,000.00 for long-term care insurance;

(cc) \$500,000.00 for basic hospital, medical, and surgical insurance, or major medical insurance; or

(III) ~~\$100,000.00~~ \$250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(ii) With respect to each individual participating in a governmental retirement plan established under ~~section~~ Section 401, ~~subsection~~ 403(b), or ~~section~~ 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, ~~\$100,000.00~~ \$250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values; ~~Provided~~ provided, however, that in no event shall the association be liable to expend more than \$300,000.00 in the aggregate with respect to any one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), and (B)(ii) of this subdivision; and provided further, however, that in no event shall the association be liable to expend more than \$500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8); or

(iii) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (B)(ii) of this subdivision (8), ~~\$1,000,000.00~~ \$5,000,000.00 in benefits, irrespective of the number of such contracts held by that contract holder; and

(iv) Provided, however, that in no event shall the association be liable to expend more than \$300,000.00 in the aggregate with respect to any one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), and (B)(ii) of this subdivision (8); and provided further, however, that in no event shall the association be liable to expend more than \$500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8).

* * * Captive Insurance * * *

Sec. 17. 8 V.S.A. § 6007(b) is amended to read:

(b) Prior to March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis of accounting, in ~~either~~ each case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds

of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by ~~section 3561~~ subsection 3561(a) of this title, and each risk retention group shall comply with the requirements set forth in section 3569 of this title. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Subdivision 6002(c)(3) of this title shall apply to each report filed pursuant to this section, except that such subdivision shall not apply to reports filed by risk retention groups.

Sec. 18. 8 V.S.A. § 6014(c)(1) is amended to read:

(1) If the total of premium tax allocated to a member all members of a consolidated group that is a are special purpose financial captive captives exceeds \$200,000.00, the total premium tax allocated to such ~~member members~~ shall be \$200,000.00; and

Sec. 19. APPLICABILITY

The provisions of Sec. 18 of this act shall apply to returns filed on and after March 1, 2009, and to calendar years which end on and after December 31, 2008.

Sec. 20. 8 V.S.A. § 6014(h) is amended to read:

(h) Annually, ~~ten~~ 12 percent of the premium tax revenues collected pursuant to this section shall be transferred to the department of banking, insurance, securities, and health care administration for the regulation of captive insurance companies under this chapter.

Sec. 21. 8 V.S.A. § 6014(k) is added to read:

(k) A captive insurance company first licensed under this chapter on or after January 1, 2009 and on or before December 31, 2010, shall receive a nonrefundable credit of \$7,500.00 applied against the aggregate taxes owed for the first taxable year for which the company has liability under this section.

Sec. 22. 8 V.S.A. § 6017(a)(1) is amended to read:

(a)(1) There is hereby created a fund to be known as the captive insurance regulatory and supervision fund for the purpose of providing the financial means for the commissioner of banking, insurance, securities, and health care administration to administer this chapter, chapter 142, and chapter 142A of this title and for reasonable expenses incurred in promoting the captive insurance industry in Vermont. The transfer of ~~ten~~ 12 percent of the premium tax under subsection 6014(h) of this title, and all fees and assessments received by the

department pursuant to the administration of these chapters shall be credited to this fund. Of this amount, not more than two percent of the premium tax under section 6014 may be transferred to the agency of commerce and community development, with approval of the secretary of administration, for promotional expenses. All fees received by the department from reinsurers who assume risk solely from captive insurance companies and are subject to the provisions of subsections 3634a(a) through (f) of this title, shall be deposited into the captive insurance regulatory and supervision fund. All fines and administrative penalties, however, shall be deposited directly into the general fund.

Sec. 23. 8 V.S.A. § 6034 is amended to read:

§ 6034. PROTECTED CELLS

A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) the shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;

(2) each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants, and such other factors as may be provided in the participant contract or required by the commissioner;

(3) the assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) no sale, exchange, or other transfer of assets may be made by such sponsored captive insurance company between or among any of its protected cells without the consent of such protected cells;

(5) no sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell;

(6) all attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities may be made by a sponsored captive insurance company between its general account and any protected cell or between any protected cells. The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the sponsored captive insurance company is a party, including any payments made by or due to be made to the sponsored captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell;

(7) in connection with the conservation, rehabilitation, or liquidation of a sponsored captive insurance company, the assets and liabilities of a protected cell shall, to the extent the commissioner determines they are separable, at all times be kept separate from, and shall not be commingled with, those of other protected cells and the sponsored captive insurance company;

(8) the “general account” of a sponsored captive insurance company shall mean all assets and liabilities of the sponsored captive insurance company not attributable to a protected cell;

~~(6)~~(9) each sponsored captive insurance company shall annually file with the commissioner such financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

~~(7)~~(10) each sponsored captive insurance company shall notify the commissioner in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

~~(8)~~(11) no participant contract shall take effect without the commissioner’s prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the business plan requiring the commissioner’s prior written approval; and

~~(9)~~(12) the business written by a sponsored captive, with respect to each cell, shall be:

(A) fronted by an insurance company licensed under the laws of any state;

(B) reinsured by a reinsurer authorized or approved by the state of Vermont; or

(C) secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be ~~established, issued or confirmed by a bank chartered in this state, a member of the Federal Reserve System, or a bank chartered by another state if such state chartered bank is acceptable to~~ approved by the commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the commissioner;

(13) notwithstanding the provisions of chapter 145 of this title or other laws of this state, and in addition to the provisions of section 6038 of this chapter, in the event of an insolvency of a sponsored captive insurance company where the commissioner determines that one or more protected cells remain solvent, the commissioner may separate such cells from the sponsored captive insurance company, and may allow, on application of the sponsor, for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies with a sponsor or sponsors, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the commissioner deems acceptable.

Sec. 24. 8 V.S.A. § 6038 is amended to read:

§ 6038. DELINQUENCY OF SPONSORED CAPTIVE INSURANCE COMPANIES

(a) In the case of a sponsored captive insurance company, the provisions of section 6018 of this title shall apply, provided Except as otherwise provided in this section, the provisions of chapter 145 of this title shall apply in full to a sponsored captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall manage the assets and liabilities of the sponsored captive insurance company pursuant to the provisions of this subchapter.

(c) Notwithstanding the provisions of chapter 145 of this title:

(1) the assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) ~~its~~ a sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

Sec. 25. 8 V.S.A. § 6043 is amended to read:

§ 6043. SECURITY REQUIRED

(a) In the case of a No branch captive insurance company shall be issued a license unless it shall possess and thereafter maintain, as security for the payment of liabilities attributable to the branch operations, the commissioner shall require that either a trust fund funded by assets acceptable to the commissioner or an irrevocable letter of credit be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The:

(1) an amount of such security may be no less than equal to the amount set forth in subdivision 6004(a)(1) of this title as the minimum capital requirement for a pure captive; and in addition

(2) and the reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the commissioner may permit a branch captive insurance company that is required to post to credit against any such reserve requirement any security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account or the amount payable under the irrevocable letter of credit required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this state or a member bank of the Federal Reserve System. that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, in either case so long as such security remains posted.

(b) Subject to the prior approval of the commissioner, the amounts required in subsection (a) of this section may be held in the form of:

(1) a trust formed under a trust agreement and funded by assets acceptable to the commissioner;

(2) an irrevocable letter of credit issued or confirmed by a bank approved by the commissioner;

(3) with respect to the amounts required in subdivision (a)(1) only, cash on deposit with the commissioner; or

(4) any combination thereof.

Sec. 26. APPLICABILITY

The amendments to 8 V.S.A. § 6043 enacted in Sec. 25 of this act shall apply only to branch captive companies formed on and after January 1, 2009. The provisions of 8 V.S.A. § 6043 in effect prior to the enactment of Sec. 25 of this act shall apply to branch captive companies formed before January 1, 2009.

Sec. 27. 8 V.S.A. § 6048k(a)(2) is amended to read:

(2) A special purpose financial captive insurance company shall report using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of generally accepted accounting principles or other comprehensive basis of accounting, in ~~either~~ each case with any appropriate or necessary modifications or adaptations ~~thereof~~ required or approved or accepted by the commissioner and as supplemented by additional information required by the commissioner.

Sec. 28. 8 V.S.A. § 6048n(12)(E) is amended to read:

(E) Notwithstanding another provision in this title, regulations adopted under this title, or another applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of a special purpose financial captive insurance company, or one or more of the special purpose financial captive insurance company's protected cells, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company or the applicable protected cell pursuant to the provisions of this subchapter. The assets attributable to one protected cell shall not be applied to the liabilities attributable to another protected cell, unless an asset or liability is attributable to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract. Recourse to the special purpose financial captive insurance company's general account in connection with the conservation, rehabilitation, or liquidation of a protected cell shall be limited to the greater of the amount of assets in the general account as of the date such

proceeding is commenced or the required minimum capital for the general account as of the date such proceeding is commenced. Assets attributable to one protected cell ~~or the special purpose financial captive insurance company's general account shall not be set off against the liabilities attributable to another protected cell or to the special purpose financial captive insurance company's general account~~ shall not be set off against the liabilities attributable to another protected cell, and assets attributable to the special purpose financial captive insurance company's general account shall not be set off against the liabilities attributable to any protected cell except to the extent provided in the preceding sentence. Relief shall not be granted nor shall any order be issued based on equitable theories of recovery, including substantive consolidation, equitable subordination, or recoupment, to attach or seize the assets of any solvent protected cell for the benefit of another protected cell or special purpose financial captive insurance company, or to pierce the corporate veil of any protected cell, in connection with the conservation, rehabilitation, or liquidation of a special purpose financial captive insurance company or one or more protected cells, unless such equitable theories, attachment, seizure or corporate veil piercing would apply to such cell if it were a special purpose financial captive insurance company without separate cells.

Sec. 29. 8 V.S.A. § 6052(c)(2) is amended to read:

(2) The applicant may bind separately any portions of the application or any amendment thereto that contain proprietary information or documents, and request confidential treatment of such portions. For the purposes of this section, "proprietary information or documents" means certain information or documents furnished by or pertaining to any of the persons specified above that would customarily be treated as confidential or sensitive and the disclosure of which could result in harm or prejudice to the person to whom the information or documents pertain or unfair advantage to another person. Such information includes, but is not limited to, trade secrets, historical or projected loss data or case reserves of members or policyholders, actuarial analyses which include such data or reserves, historical or projected financial data not otherwise publicly available, and similar information or documents. The commissioner shall determine which portions specified by the applicant fall within the definition of proprietary information or documents and treat such portions as confidential. Provided, however, that nothing herein shall excuse the applicant from making any required disclosure under the RRA 1986, this chapter or chapter 141 of this title, or prohibit the commissioner from disclosing any proprietary information or documents in the furtherance of any legal or regulatory proceeding. Before using proprietary information or documents in a legal or regulatory proceeding that does not involve the

applicant or any person named in the application or any amendment thereto, the commissioner shall first seek to obtain the same information from nonconfidential sources. If unavailable from nonconfidential sources, the commissioner shall seek to protect the confidential information or documents from unnecessary disclosure. Upon licensing, the commissioner shall forward to the National Association of Insurance Commissioners all information required under the RRA 1986 to be submitted to each state where the risk retention group proposes to operate and all other information not deemed confidential under this section. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of section 6053 or any other sections of this chapter. In addition, the commissioner may provide access to confidential application information with respect to risk retention groups to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

Sec. 30. 8 V.S.A. § 6052(d) is amended to read:

(d) The provisions of ~~section~~ subsection 6008(c) of this title shall apply to risk retention groups chartered in this state, except that such provisions shall not apply to final examination reports relating to risk retention groups and except that the commissioner may, in the commissioner's discretion, grant access to any other examination information covered by subsection 6008(c) of this title to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

* * * Health Care Administration * * *

Sec. 31. 18 V.S.A. § 9409a is amended to read:

§ 9409a. HEALTH CARE INSURANCE REIMBURSEMENT SURVEY

In order to understand the impact of reimbursement on access to health care, the cost shift, the workforce shortages and recruitment and retention of health care professionals, the commissioner shall annually survey health insurers to determine the reimbursement paid for the ten most common billing codes for primary care health services within the current procedural terminology category of Evaluation and Management Services and the ten most common billing codes outside the category of Evaluation and Management, excluding routine venipuncture. Each insurer shall report the average reimbursement

paid for a specific service. The survey shall be managed by the department of banking, insurance, securities, and health care administration, and any public reports shall be sufficiently aggregated so that they would not enable readers to determine the amount of reimbursement paid for specific services to any particular provider or facility. No provider-specific or facility-specific reimbursement information shall be included in the public survey reports, or be available through public records requests. When published, survey data will be at least 90 days old. Only the department will have access to the underlying survey responses. The department shall provide a copy of the survey results to the house committee on health care and the senate committee on health and welfare.

Sec. 32. 8 V.S.A. § 4062c is amended to read:

§ 4062c. COMPLIANCE WITH FEDERAL LAW

Except as otherwise provided in this title, health insurers, hospital or medical service corporations, and health maintenance organizations that issue, sell, renew or offer health insurance coverage in Vermont shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as provided in Title XXVII Part A, Subpart 3, Section 2722 of the Public Health Service Act as amended from time to time (42 U.S.C., Chapter 6A, Subchapter XXV). The commissioner shall enforce such requirements pursuant to his or her authority under this title.

Sec. 33. 18 V.S.A. § 9410(h)(1) is amended to read:

(h)(1) All health insurers shall electronically provide to the commissioner in accordance with standards and procedures adopted by the commissioner by rule:

(A) their health insurance claims data, provided that the commissioner may exempt from all or a portion of the filing requirements of this subsection data reflecting utilization and costs for services provided in this state to residents of other states;

(B) cross-matched claims data on requested members, subscribers, or policyholders; and

(C) member, subscriber, or policyholder information necessary to determine third party liability for benefits provided.

Sec. 34. EFFECTIVE DATES

This act shall take effect July 1, 2009, except that this section, Secs. 15 and 16 (guaranty funds), and Secs. 17 through 30 (captive insurance) shall take effect upon passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

S. 44.

Senator Kitchel, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to indicating anatomical gifts on a driver's license.

Reported recommending that the bill be amended in Sec. 1, 23 V.S.A. § 618a, by striking out the word "place" and inserting in lieu thereof the word placed

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Senate Resolution Adopted

S.R. 6.

Senate resolution entitled:

Senate resolution to request the President to support a global treaty on mercury.

Having been placed on the Calendar for action, was taken up and adopted.

Appointment of Senate Members to the Joint Committee on Judicial Retention

Pursuant to the provisions of 4 V.S.A. §607, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Committee on Judicial Retention during this biennium:

Senator Kitchell
Senator Flanagan
Senator Nitka
Senator Mullin

Appointment of Senate Members to Joint Fiscal Committee

Pursuant to the provisions of 2 V.S.A. §501, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Fiscal Committee for terms of two years ending February 1, 2010:

Senator Bartlett, *ex officio*
Senator Cummings, *ex officio*
Senator Shumlin
Senator Sears
Senator Snelling

Administrative Rules

Pursuant to the provisions of 3 V.S.A. §817, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Legislative Committee on Administrative Rules for terms of two years ending February 1, 2010:

Senator MacDonald
Senator Snelling
Senator Ayer
Senator Cummings

Appointment of Senate Members to the Joint Legislative Corrections Oversight Committee

Pursuant to the provisions of Sec. 170d of No. 142 of Acts of 2002, the President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Legislative Corrections Oversight Committee for terms of two years:

Senator Bartlett
Senator Flanagan
Senator Sears
Senator Choate
Senator Scott

Appointment of Senate Members to Legislative Council

Pursuant to the provisions of 2 V.S.A. §402, the President announced the appointment by the President of the following Senators to serve on the Legislative Council for terms of two years:

Senator Shumlin, *ex officio*
Senator Mazza
Senator Mullin
Senator Scott

Appointment of Senate Members to Northeast Legislative Association on Prescription Drug Pricing

The President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Northeast Legislative Association on Prescription Drug Pricing during this biennium:

Senator Shumlin
Senator Campbell
Senator Mullin
[Alternate Member Senator Sears]

Appointment of Senate Member to Vermont State Nuclear Advisory Panel (V-SNAP)

Pursuant to the provisions of 18 V.S.A. §1700, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Vermont State Nuclear Advisory Panel (V-SNAP) for a term of two years ending on January 15, 2010:

Senator MacDonald

Appointment of Senate Member to Governor's Children and Youth Cabinet

Pursuant to the provisions of Executive Order No. 03-41, issued on February 5, 2002, the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Governor's Children and Youth Cabinet during this biennium:

Senator Nitka

Appointment of Senate Member to the Education Commission of the States

Pursuant to federal law (as previously set forth in 16 V.S.A. §1503, now repealed), the President, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Education Commission of the States during this biennium:

Senator Starr

Appointment of Senate Members to Joint Rules Committee

The President, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Rules Committee for terms of two (2) years pursuant to the provisions of Joint Rule No. 5:

Senator Shumlin, *ex officio*

Senator Doyle

Senator Mazza

Senator Campbell

Message from the House No. 18

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bill of the following title:

H. 136. An act relating to executive branch fees.

In the passage of which the concurrence of the Senate is requested.

H.C.R. 36. House concurrent resolution honoring Maurice Stephens Winn as Vermont's oldest working land surveyor.

H.C.R. 37. House concurrent resolution in memory of Fletcher Brush of Salisbury.

H.C.R. 38. House concurrent resolution congratulating the Hartford High School Hurricanes 2008 Division I championship football team.

H.C.R. 39. House concurrent resolution congratulating Eliza Masure of Bellows Falls for organizing a Walk for Warmth Sunday.

H.C.R. 40. House concurrent resolution congratulating the Peace and Justice Center in Burlington on its 30th anniversary.

H.C.R. 41. House concurrent resolution honoring the heroism of Robert Meehan of Middlesex.

H.C.R. 42. House concurrent resolution celebrating the diamond anniversary of alpine skiing in Vermont and the 2009 Woodstock Winter Fest.

H.C.R. 43. House concurrent resolution congratulates Outright Vermont on its 20th anniversary.

In the adoption of which the concurrence of the Senate is requested.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Corcoran and others,

By Senators Hartwell and Sears,

H.C.R. 36.

House concurrent resolution honoring Maurice Stephens Winn as Vermont's oldest working land surveyor.

By Representative Jewett,

By Senators Ayer and Giard,

H.C.R. 37.

House concurrent resolution in memory of Fletcher Brush of Salisbury.

By Representative Bohi and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 38.

House concurrent resolution congratulating the Hartford High School Hurricanes 2008 Division I championship football team.

By Representatives Obuchowski and Partridge,

H.C.R. 39.

House concurrent resolution congratulating Eliza Masure of Bellows Falls for organizing a Walk for Warmth Sunday.

By Representative Wizowaty and others,

H.C.R. 40.

House concurrent resolution congratulating the Peace and Justice Center in Burlington on its 30th anniversary.

By Representative Klein,

H.C.R. 41.

House concurrent resolution honoring the heroism of Robert Meehan of Middlesex.

By Representative Clarkson,

H.C.R. 42.

House concurrent resolution celebrating the diamond anniversary of alpine skiing in Vermont and the 2009 Woodstock Winter Fest.

By Representative Lippert and others,

H.C.R. 43.

House concurrent resolution congratulates Outright Vermont on its 20th anniversary.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, February 13, 2009.